

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et*
al.,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**NOTICE OF HEARING FOR OBJECTION OF PUERTO RICO SALES TAX
FINANCING CORPORATION TO PROOFS OF CLAIM OF UBS FINANCIAL
SERVICES INCORPORATED OF PUERTO RICO (CLAIM NOS. 36217, 38286, 39824,
40003, 41873, AND 47487)**

PLEASE TAKE NOTICE that, on December 19, 2018, the Puerto Rico Sales Tax Financing Corporation (“COFINA”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as COFINA’s representative pursuant to Section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² filed the *Objection of Puerto Rico Sales Tax Financing Corporation to Proofs of Claim of UBS Financial Services Incorporated of Puerto Rico (Claim Nos. 36217, 38286, 39824, 40003, 41873, and 47487)* (the “Objection”) with the United States District Court for the District of Puerto Rico

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA” and together with the Commonwealth, COFINA, HTA, and ERS, the “Debtors”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

² PROMESA is codified at 48 U.S.C. §§ 2101-2241.

(the “Court”), seeking to disallow in their entirety Proofs of Claim Nos. 36217, 38286, 39824, 40003, 41873, and 47487 filed by UBS Financial Services Incorporated of Puerto Rico.

PLEASE TAKE FURTHER NOTICE that any response to the Objection must be filed in writing with the Court and must be served upon and received by the undersigned counsel for COFINA by **4:00 pm (Atlantic Time) on February 26, 2019.**

PLEASE TAKE FURTHER NOTICE that, in the event that one or more responses to the Objection are timely filed, the Objection shall be considered by The Honorable Laura Taylor Swain, at the United States District Court for the District of Puerto Rico, 150 Carlos Chardón Street, Federal Building, San Juan, Puerto Rico 00918-1767, at **9:30 a.m. on March 13, 2019.**

PLEASE TAKE FURTHER NOTICE THAT, IF NO RESPONSES TO THE OBJECTION ARE TIMELY FILED, SERVED, AND RECEIVED, IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE OBJECTION WITHOUT FURTHER NOTICE OR HEARING.

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PLEASE TAKE FURTHER NOTICE that copies of all documents filed in these Title III Cases are available (a) free of charge by visiting <https://cases.primeclerk.com/puertorico> or by calling +1 (844) 822-9231, and (b) on the Court's website at <http://www.prd.uscourts.gov>, subject to the procedures and fees set forth therein.

Dated: December 19, 2018
San Juan, Puerto Rico

Respectfully submitted,

/s/ Ricardo Burgos Vargas

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et*
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Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**OBJECTION OF PUERTO RICO SALES TAX FINANCING CORPORATION
TO PROOFS OF CLAIM OF UBS FINANCIAL SERVICES INCORPORATED OF
PUERTO RICO (CLAIM NOS. 36217, 38286, 39824, 40003, 41873, AND 47487)**

The Puerto Rico Sales Tax Financing Corporation (“COFINA”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as COFINA’s representative pursuant to Section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² files this objection (the “Objection”) to the claims (Proofs of Claim Nos. 36217, 38286, 39824, 40003, 41873, and 47487) of UBS Financial Services Incorporated of Puerto Rico (“Claimant”), and in support of the Objection, respectfully represents as follows:

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JURISDICTION

1. The United States District Court for the District of Puerto Rico has subject matter jurisdiction over this matter pursuant to PROMESA section 306(a).

2. Venue is proper in this district pursuant to PROMESA section 307(a).

BACKGROUND

3. COFINA is a public corporation and instrumentality of the Commonwealth constituting a corporate and political entity independent and separate from the Commonwealth, created under Act No. 91 of the Legislative Assembly of the Commonwealth.

4. On May 5, 2017, the Oversight Board, at the request of the Governor, issued a restructuring certification pursuant to PROMESA sections 104(j) and 206 and filed a voluntary petition for relief for COFINA, pursuant to PROMESA section 304(a), commencing a case under Title III thereof (the “COFINA Title III Case”).

5. Pursuant to that certain Amended and Restated Sales Tax Revenue Bond Resolution, adopted on July 13, 2007, as amended on June 19, 2009, and pursuant to certain supplemental resolutions, COFINA issued a series of senior and subordinate bonds in aggregate approximate amount of \$17 billion, to, among other things, defray certain debt obligations of the Puerto Rico Government Development Bank and the Puerto Rico Public Finance Corporation (the “Bonds”). Bank of New York Mellon (“BNYM”) serves as Trustee with respect to the Bonds.

6. On or about May 29, 2018, Claimant asserted six claims against COFINA for indemnification pursuant to the terms of underwriting agreements between Claimant and COFINA, which were logged by Prime Clerk as Proof of Claim Nos. 36217, 38286, 39824, 40003, 41873, and 47487 (each a “Claim” and collectively the “Claims”).

OBJECTION TO PROOF OF CLAIM

7. Federal Rule of Bankruptcy Procedure 3007(d), made applicable to this case by PROMESA section 310, allows a debtor to join objections to more than one claim in a single omnibus objection if all the claims were filed by the same entity. In accordance with this rule, COFINA files this Objection to the six separate Claims filed by Claimant.

8. This Objection seeks to disallow claims pursuant to 11 U.S.C. § 502(e)(1)(B) as claims for reimbursement or contribution that are contingent. Bankruptcy Code section 502(e)(1)(B) provides that the Court shall disallow any claim “for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that . . . such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution” 11 U.S.C. § 502(e)(1)(B).

9. Each of the Claims seeks “any and all amounts that COFINA is liable for under [its] rights to indemnification and/or contribution,” pursuant to certain underwriting agreements between the parties. Each of the Claims further asserts liability against COFINA based on unliquidated and unspecified amounts for which Claimant “is or may be entitled by setoff, recoupment, or other legal or equitable doctrines, rights and defenses to offset and reduce any amounts UBS owes or might owe.” None of the Claims provides evidence that any indemnification obligation has actually arisen between COFINA and Claimant, let alone demonstrates the amount of any such indemnification claim. Claims such as this that are “contingent as of the time of allowance or disallowance of such claim or reimbursement” should be disallowed under the Bankruptcy Code, 11 U.S.C. § 502(e)(1)(B). *See also Route 21 Assocs. Of Belleville, Inc. v. MHC, Inc.*, 486 B.R. 75, 97-98 (S.D.N.Y. 2012) (noting that courts routinely “disallow claims for unknown, future costs under section 502(e)(1)(B)” including claims for

indemnification); *Aetna Cas. and Surety Co. v. Georgia Tubing Co.*, No. 93-cv-3659, 1995 WL 429018, at *2 (S.D.N.Y. July 20, 1995) (“Section 502(e)(1)(B) automatically disallows claims ... seeking reimbursement, indemnity, or contribution that are contingent at the time of the disallowance.”). Accordingly, the Claims remain wholly contingent and should be disallowed pursuant to 11 U.S.C. § 502(e)(1)(B).

10. Additionally, to the extent the Claims are allowed, they are subject to subordination pursuant to 11 U.S.C. § 510(b) as claims “for reimbursement or contribution allowed under section 502” on account of a claim for damages arising from the purchase or sale of a security of the debtor. 11 U.S.C. § 510(b). Because each of the Claims seek reimbursement of costs and expenses in connection with claims arising from the purchase or sale of the Bonds, COFINA requests that the Court enter an order finding that any portion of the Claims that is not disallowed would be subordinated under 11 U.S.C. § 510(b). *See In re Public Serv. Co.*, 129 B.R. 3, 4-5 (Bankr. D.N.H. 1991) (holding that damages claims and defense costs related to litigation involving warrants subject to subordination pursuant to Bankruptcy Code section 510(b)).

RESERVATION OF RIGHTS

11. This Objection is limited to the grounds stated herein. Accordingly, it is without prejudice to the rights of COFINA to object to the Claims or any other claim on any ground whatsoever. COFINA expressly reserves all further substantive or procedural objections. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any claim against COFINA; (b) a waiver of COFINA’s right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of

the Bankruptcy Code; or (e) a waiver of COFINA's rights under PROMESA, the Bankruptcy Code or any other applicable law.

NOTICE

12. COFINA has provided notice of this Objection to (a) the individual creditor subject to this Objection, (b) the U.S. Trustee, and (c) the Master Service List (as defined by the *Order Further Amending Case Management Procedures* [ECF No. 3804]), which is available on the Debtors' case website at <https://cases.primeclerk.com/puertorico>. COFINA submits that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

13. No prior request for the relief sought in this Objection has been made to this or any other court.

[Remainder of page intentionally left blank.]

WHEREFORE COFINA respectfully requests entry of an order, substantially in the form of the Proposed Order attached hereto as **Exhibit A**, (1) granting the relief requested herein, and (2) granting COFINA such other and further relief as is just.

Dated: December 19, 2018
San Juan, Puerto Rico

Respectfully submitted,

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EXHIBIT A

Proposed Order

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

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PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**ORDER GRANTING OBJECTION OF PUERTO RICO SALES TAX FINANCING
CORPORATION' TO PROOFS OF CLAIM OF UBS FINANCIAL SERVICES
INCORPORATED OF PUERTO RICO
(CLAIM NOS. 36217, 38286, 39824, 40003, 41873, AND 47487)**

Upon the *Objection of Puerto Rico Sales Tax Financing Corporation to Proofs of Claim of UBS Financial Services Incorporated of Puerto Rico (Claim Nos. 36217, 38286, 39824, 40003, 41873, and 47487)* (the “Objection”), dated December 19, 2018, of the Puerto Rico Sales Tax Financing Corporation (“COFINA”), for entry of an order disallowing in their entirety the claims of UBS Financial Services Incorporated of Puerto Rico (Proofs of Claim Nos. 36217, 38286, 39824, 40003, 41873, and 47487) (collectively, the “Claims”), as more fully set forth in the Objection; and the Court having jurisdiction to consider the Objection and to grant the relief

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requested therein pursuant to Section 306(a) of PROMESA²; and venue being proper pursuant to Section 307(a) of PROMESA; and due and proper notice of the Objection having been provided to those parties identified therein, and no other or further notice being required; and the Court having determined that the relief sought in the Objection is in the best interest of COFINA, its creditors, and all the parties in interest; and the Court having determined that the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Objection is GRANTED as set forth herein; and it is further

ORDERED that the Claims are hereby disallowed in their entirety; and it is further

ORDERED that Prime Clerk, LLC, is authorized and directed to delete the Claims from the official claims register in the COFINA Title III Case; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____

Honorable Judge Laura Taylor Swain
United States District Judge

² Capitalized terms used but not defined herein shall have the meanings set forth in the Objection.